

**NOTICE OF INTENT TO ADOPT AN ADVISORY OPINION OF THE  
GEORGIA GOVERNMENT TRANSPARENCY AND  
CAMPAIGN FINANCE COMMISSION**

TO ALL INTERESTED PERSONS AND PARTIES:

Notice is hereby given that pursuant to the authority set forth below, the Georgia Government Transparency and Campaign Finance Commission (hereinafter "Commission") proposes to adopt:

**Advisory Opinion No.: 2017-04**

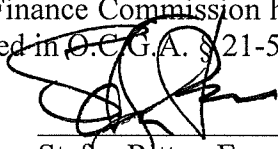
This notice, together with an exact copy of the proposed advisory opinion is being mailed to all persons who have requested, in writing, that they be placed on a mailing list. A copy of this notice and an exact copy of the advisory opinion may be reviewed during normal business hours of 8:30 a.m. to 4:30 p.m. Monday through Friday, except official State holidays, at the Georgia Government Transparency and Campaign Finance Commission, 200 Piedmont Avenue SE, Suite 1416 - West Tower, Atlanta, Georgia 30334. These documents will be available for review on the Georgia Government Transparency and Campaign Finance Commission website ([www.ethics.ga.gov](http://www.ethics.ga.gov)) and copies may be requested by contacting the Commission at 404-463-1980.

**A public hearing is scheduled to begin at 10:00 AM on September 21, 2017 in Room 606 at the Coverdell Legislative Office Building, 18 Capitol Square SW, Atlanta, GA 30334** to provide the public an opportunity to comment upon and provide input into the proposed advisory opinion. At the public hearing anyone may present data, make a statement, comment, or offer a viewpoint or argument whether orally or in writing. Lengthy statements or statements of a considerable technical or economic nature, as well as previously recorded messages, must be submitted for the official record. Oral statements should be concise and will be limited to five (5) minutes per person. Written comments are welcome. Such written comments must be legible and signed, and should contain contact information from the maker (address, telephone and/or facsimile number, etc.). To ensure their consideration, written comments must be received on or before September 20, 2017. Written Comments should be addressed to Nancy Sandberg, Legal Administrative Assistant, Georgia Government Transparency and Campaign Finance Commission, 200 Piedmont Avenue SE, Suite 1416 – West Tower, Atlanta, Georgia 30334. Fax: 404-463-1988.

**The proposed advisory opinion will be considered for adoption by the Commission at its meeting scheduled to begin at 10:00 a.m. on September 21, 2017, at the Coverdell Legislative Office Building, Room 606, 18 Capitol Square SW, Atlanta, GA 30334.**

The Georgia Government Transparency and Campaign Finance Commission has the authority to adopt this advisory opinion pursuant to authority contained in O.C.G.A. § 21-5-6(b)(13).

This 23<sup>rd</sup> day of August, 2017.

  
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Stefan Ratter, Executive Secretary



## GEORGIA GOVERNMENT TRANSPARENCY & CAMPAIGN FINANCE COMMISSION

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### Advisory Opinion No. 2017-04

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In response to a Commission staff request on May 1, 2017, the Georgia Government Transparency and Campaign Finance Commission advises that the use of a public officer's or candidate's personal residence for fundraising events and/or campaign office space is neither an in-kind contribution nor an in-kind expenditure to/by their campaign pursuant to O.C.G.A. §§ 21-5-3(7), 21-5-3(12), as well as, Ga. Comp. R. & Regs. r. 189-6-.07 (in-kind contribution) and 189-2-.01(11) (in-kind expenditure) as further detailed below.

However, should a public officer or candidate for public office utilize a space for campaign purposes that would otherwise, but for the campaign, be used for commercial purposes, the use of such space would constitute an "in-kind contribution" and "in-kind expenditure" at the prevailing market rate and would be subject to disclosure in the appropriate campaign contribution disclosure report(s). O.C.G.A. §§ 21-5-3(7), 21-5-3(12), and 21-5-34, as well as, Ga. Comp. R. & Regs. r. 189-6-.07 and 189-2-.01(11).

### **Question Presented**

- (1) Does the use of a personal residence by a public officer or candidate for public office for fundraising events and/or campaign office space constitute an in-kind contribution and/or in-kind expenditure to/by their campaign?

### **Factual Background**

After receiving numerous inquiries from various public officers and candidates for public office, Commission staff seek guidance as to whether the use of a personal residence by a public officer or candidate for public office for fundraising events and/or campaign office space constitute an in-kind contribution and/or in-kind expenditure pursuant to O.C.G.A. §§ 21-5-3(7), 21-5-3(12), 21-5-34, as well as, Ga. Comp. R. & Regs. r. 189-6-.07 and 189-2-.01(11).

### **Discussion**

The Georgia Government Transparency and Campaign Finance Act (the "Act"), O.C.G.A. § 21-5-1 *et. seq.*, requires every public officer and candidate for public office to file periodic campaign finance disclosures with the Commission in the form of campaign contribution disclosure reports ("CCDR"). O.C.G.A. §§ 21-5-2, 21-5-34(a)(1)(A). While state level public officers and candidates for public office are required to electronically file their periodic campaign

finance disclosures directly with the Commission, local public officers and candidates for local public office are required to first file their disclosures with a local government agency who then serves as the officer's/candidate's proxy by transmitting those disclosures to the Commission. O.C.G.A. §§ 21-5-34(a)(1)(B)(3)-(4) and 21-5-50(a)(3)-(3.1).

To further the goal of promoting transparency in campaign finance disclosures, the Act imposes a regular filing regimen for public officers and candidates for public office to follow during an election cycle, to include, filing schedules for an election year, non-election years, and subsequent supplemental reports after a campaign has ended.<sup>1</sup>

With respect to CCDRs, the Act mandates that public officers and candidates for public office must disclose their campaign contributions and campaign expenditures, with all such contributions and expenditures in excess of \$100.00 being itemized so as to identify the contributor and end-recipient of said funds respectively. O.C.G.A. §§ 21-5-34(b)(1)(A), 21-5-34(b)(1)(B). Under the Act, a "contribution" is defined as:

[A] gift, subscription, membership, loan, forgiveness of debt, advance or deposit of money **or anything of value conveyed or transferred for the purpose of influencing the nomination for election or election of any person for office**, bringing about the recall of a public officer holding elective office or opposing the recall of a public officer holding elective office, or the influencing of voter approval or rejection of a proposed constitutional amendment, a state-wide referendum, or a proposed question which is to appear on the ballot in this state or in a county or a municipal election in this state. The term specifically shall not include the value of personal services performed by persons who serve without compensation from any source and on a voluntary basis. The term "contribution" shall include other forms of payment made to candidates for office or who hold office when such fees and compensation made can be reasonably construed as a campaign contribution designed to encourage or influence a candidate or public officer holding elective office. The term "contribution" shall also encompass transactions wherein a qualifying fee required of the candidate is furnished or paid by anyone other than the candidate.

O.C.G.A. § 21-5-3(7) (Emphasis added).

The Act defines an "expenditure" as:

[A] purchase, payment, distribution, loan, advance, deposit, **or any transfer of money or anything of value made for the purpose of influencing the nomination for election or election of any person**, bringing about the recall of a public officer holding elective office or opposing the recall of a public officer holding elective office, or the influencing of voter approval or rejection of a

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<sup>1</sup> An election cycle has been defined by the General Assembly as "[T]he period from the day following the date of an election or appointment of a person to elective public office through and including the date of the next such election of a person to the same public office and shall be construed and applied separately for each elective office." O.C.G.A. § 21-5-3(10).

proposed constitutional amendment, a state-wide referendum, or a proposed question which is to appear on the ballot in this state or in a county or a municipal election in this state. The term specifically shall not include the value of personal services performed by persons who serve without compensation from any source and on a voluntary basis. The term "expenditure" shall also include the payment of a qualifying fee for and on behalf of a candidate.

O.C.G.A. § 21-5-3(12) (Emphasis added).

Although the Act's definition of contribution and expenditure clearly contemplates the acceptance of non-monetary goods and services by a public officer and/or candidate for public office, the Commission has further clarified the Act's definitions of contribution and expenditure to specifically delineate what is known as "in-kind" contributions and expenditures. The Commission has held that an in-kind contribution is "[a]ny item of value other than money received by a candidate or any committee." Ga. Comp. R. & Regs. r. 189-6-.07. Whereas an in-kind expenditure is "[a]n expenditure of any goods or services for which a candidate or campaign committee did not extend payment to an end-recipient for the goods or services provided, but for which the campaign received the use / benefit of said goods or services. Ga. Comp. R. & Regs. r. 189-2-.01.

Under the facts presented in this request for advisory opinion, the Commission finds the operative portions of §§ 21-5-3(7) and 21-5-3(12) of the Act clearly show that it was the intention of the Georgia General Assembly to consider the receipt of non-monetary goods and services by a public officer and/or candidate for public office to be reportable contributions and/or expenditures subject to normal reporting requirements on said person's CCDR.

The foregoing notwithstanding, the Commission finds that the use of a public officer's or candidate's personal residence for fundraising events and/or campaign office space is neither an in-kind contribution nor an in-kind expenditure by their campaign. Moreover, a public officer or candidate for public office may use non-commercial property for campaign purposes and said usage will not constitute an in-kind contribution and/or in-kind expenditure. However, if a public officer or candidate for public office utilizes a commercial space, or a private space that is from time to time let for commercial purposes, the use of such space will constitute a reportable in-kind contribution and in-kind expenditure with the value of said usage being determined by the space's then prevailing market rate.

### **Conclusion**

For the reasons described above, the Commission advises that the use of a public officer's or candidate's personal residence for fundraising events and/or campaign office space is neither an in-kind contribution nor an in-kind expenditure by their campaign pursuant to O.C.G.A. §§ 21-5-3(7), 21-5-3(12), as well as, Ga. Comp. R. & Regs. r. 189-6-.07 and 189-2-.01(11).

However, should a public officer or candidate for public office utilize a space for campaign purposes that would otherwise, but for the campaign, be used for commercial purposes, the use of such space would constitute an in-kind contribution and in-kind expenditure at the then prevailing market rate and would be subject to disclosure in the appropriate campaign contribution disclosure

report. O.C.G.A. §§ 21-5-3(7), 21-5-3(12), and 21-5-34, as well as, Ga. Comp. R. & Regs. r. 189-6-.07 and 189-2-.01(11).

This Advisory Opinion concerns the application of the Georgia Government Transparency and Campaign Finance Act, or regulations prescribed by the Georgia Government Transparency and Campaign Finance Commission, to the specific facts, transaction or activity set forth in Request for Advisory Opinion 2017-04.

Advisory Opinion 2017-04 is hereby adopted by the Commission in conformity with O.C.G.A. § 21-5-6(13) on **September 21, 2017**.

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Mary Paige Adams  
Chair of the Commission

AO 2017-04 prepared by Stefan Ritter and Robert S. Lane.  
August 10, 2017.